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PHOENIX, ARIZONA

September 15, 1967

DEPARTMENT OF LAW LETTER OPINION NO. 62-L (R-95)

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REQUESTED BY: WALTER J. EDELBLUT, JR., Executive Secretary  
State Board of Technical Registration

- QUESTIONS:
1. Are appointed or elected members of a state or municipal board or agency required to swear or affirm when accepting office that they will abide by and uphold the laws of Arizona?
  2. Can the State Board of Technical Registration itself require other state and municipal boards and agencies to comply with A.R.S. §32-144(4)?

- ANSWERS:
1. Yes.
  2. No, but the Board may secure an order from the Superior Court requiring compliance with A.R.S. §32-144(4).

1. Are appointed or elected members of a state or municipal board or agency required to swear or affirm when accepting office that they will abide by and uphold the laws of Arizona?

A.R.S. §38-231(G) does set forth such a requirement in the following language:

"In addition to any other form of oath or affirmation specifically provided by law for an officer or employee, before any officer or employee enters upon the duties of

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his office or employment, he shall take and subscribe the following oath or affirmation:

State of Arizona, County of \_\_\_\_\_, I, \_\_\_\_\_ do solemnly swear (or affirm) that I will support the Constitution of the United States and the laws of the State of Arizona; that I will bear true faith and allegiance to the same, and defend them against all enemies, foreign and domestic, and that I will faithfully and impartially discharge the duties of the office of \_\_\_\_\_ (name of office) according to the best of my ability, so help me God (or so I do affirm).

\_\_\_\_\_  
signature of officer  
or employee."

All members of state and municipal boards or agencies are subject to the foregoing provision, as A.R.S. §38-231(B) provides that:

"For the purposes of this section, the term officer or employee means any person elected, appointed, or employed, either on a part-time or a full-time basis, by the State, or any of its political subdivisions or any county, city, town, municipal corporation, school district, public educational institution, or any board, commission, or agency of any of the foregoing."

It is true that A.R.S. §38-231(E) was struck down as unconstitutional by the United States Supreme Court in Elfbrandt v. Russell, 384 U.S. 11, 16 L.Ed.2d 321, 86 S. Ct. 1238. However, in conformity with Arizona Attorney General's Opinion No. 66-14, it is believed that section (E) of A.R.S. §38-231 is severable from the remainder of the statute and that, therefore, sections (B) (C) and (G), discussed herein, are all valid and enforceable.

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A.R.S. §38-231 applies to all officers or employees whether or not they entered their positions prior to the effective date of the statute. A.R.S. §38-231(C) states that:

"Any officer or employee elected, appointed, or employed prior to the effective date of this act shall, not later than 90 days after the effect of this act, take and subscribe the form of oath or affirmation set forth in this section."

The effective date of the Act is March 30, 1961. Thus, every member of a state or municipal board or agency who properly holds his office has taken and subscribed the oath of office set forth in A.R.S. §38-231(G) and reproduced above. Indeed, failure to do so constitutes a misdemeanor under A.R.S. §38-442.

Consequently, in answer to question No. 1, appointed or elected members of a state or municipal board or agency are required to swear or affirm when accepting office that they will abide by and uphold all the laws of the State of Arizona.

2. Does Arizona law permit the State Board of Technical Registration to require other state and municipal boards and agencies to comply with A.R.S. §32-144(4)?

Administrative officers and agencies have no common law or inherent power. The powers and duties of an administrative agency are to be measured by the statute creating it. Kendall v. Malcolm, 98 Ariz. 329, 404 P.2d 414 (1965).

The Technical Registration Act does not confer upon the State Board of Technical Registration, either explicitly or implicitly, the power to require that other state and municipal boards and agencies comply with A.R.S. §32-144(4). Therefore, the Board itself does not have the power to require compliance with this section of the statute without resort to the courts.


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However, in a matter properly brought before it by the Board, the Superior Court clearly has the power to order any state or municipal board or agency to comply with the laws of Arizona, including A.R.S. §32-144(4). Constitution of the State of Arizona, Art. 6, §6.

Respectfully submitted,

  
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The Attorney General

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